IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16639 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEGHRAJ V. CHAUDHARY

Versus

MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 16639 of 2003

MR MA PAREKH for Petitioner No. 1

MR KM PATEL for Respondent No. 1, 2, 4

MR KUNJAL PANDYA AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 23/09/2004

ORAL JUDGEMENT

RULE. Mr KM Patel, learned counsel appears and waives service of rule on behalf of respondent Nos.1, 2

and 4. Mr Kunjal Pandya, learned AGP waives service of rule on behalf of respondent No.3.

With the consent of the learned counsel for the parties, the matter is taken up for final hearing today.

2. By filing this petition, it is prayed that the respondent-authority should regularise the services of the petitioner on the post of Mechanic as a regular employee and his pay scale be accordingly fixed. From the appointment order at Annexure "A" to this petition, it is clear that the petitioner was appointed with effect from 1.6.1983 as Mechanic on adhoc basis on the fixed pay of Rs.400/- and accordingly, as such, now it is not in dispute that the petitioner was serving since June 1983 as Mechanic.

3. At the time of hearing, learned advocate for the petitioner has relied upon the order passed by this Court in Special Civil Application No.3433 of 1992 as well as the order passed by this Court in Special Civil Application No.6388 of 1998 and order passed in Special Civil Application No.9083 of 2003 wherein this Court has given certain directions for regularizing the services of the petitioners of those petitions. Relying upon the said orders, it is prayed that similar directions are required to be issued in this petition.

4. I have heard the learned advocates for the parties and I have also gone through the orders of this Court passed in Special Civil Application Nos.3433 of 1992, 6388 of 1998 and 9083 of 2003.

5. It is not in dispute that the present petitioner is serving on adhoc basis since more than two decades and, unfortunately, since long, he is continued on the fixed pay. The petitioner has approached the Authority to absorb him as regular employee and to give him regular pay scale. In any view, since the petitioner is serving since considerable time, it would not be just and proper to continue his services on adhoc basis for such a long time and that too, on a fixed pay. Considering the facts and circumstances of the case as well as considering the observations of this Court against the very respondent in Special Civil Application Nos.3433 of 1992, 6388 of 1998 and 9083 of 2003, respondent No.1 is directed to consider the case of the petitioner for absorption/regularisation on the post in question and appropriate decision in this connection may be taken as early as possible, preferably within a period of one month from the date of receipt of writ of this Court.

6. The learned advocate for the petitioner has fairly submitted that the petitioner will have no objection if he is accommodated at any place, where the vacancy is available, and for that purpose, even if he is transferred, he will not object to the same. Under the circumstances, the Corporation may also consider whether the petitioner can be accommodated on regular basis at any place wherever there is vacancy on which he can be absorbed. It is clarified that, in case the petitioner is given regular appointment, he will be entitled to the benefit of regular pay scale only from the date of passing of such order and his past services may not be counted for the payment of increments, leave as well as seniority. In case such order is passed, by which regular appointment is given to the petitioner, such order will have no retrospective effect.

7. Considering the facts and circumstances of the case, the respondent-Corporation is directed to take appropriate decision in accordance with law in this behalf and the Corporation may decide whether any regular appointment can be given to the petitioner by giving him appointment in the regular pay scale. While taking such decision, observations made by this Court in the earlier petitions, viz. Special Civil Application Nos.3433 of 1992, 6388 of 1998 and 9083 of 2003 may also be taken into consideration.

8. In view of what is stated above, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

It is clarified that this order is passed considering the facts and circumstances of the case and considering the fact that the petitioner has been serving on adhoc basis for more than 20 years. This judgment may not, therefore, be treated as a precedent in other cases where such matters are required to be decided on their own facts. In case the respondents pass any order adverse to the petitioner, the petitioner will be at liberty to move this Court for revival of this petition.

Direct service is permitted.

(M.S. SHAH, J.)
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